CONFESSIONS COUPLED WITH EXCULPATORY STATEMENTS.—That the defendant is entitled to the benefit of any exculpatory statements made at the time of a confession which has been introduced against him has been recognized since the time of the ancient common law, *King* v. *Paine* (Eng. 1696) 5 Mod. 165; but in assigning as the reason for their introduction that such statements change a confession to an admission it would seem that the Supreme Court of Georgia has erred; *Owens* v. *State* (1904) 48 S. E. 21. The court contends that a statement must contain not only an acknowledgment of the commission of the act charged, but also of the guilty intent in order to make it a confession; but there is good authority opposed to this view, and it seems unsound on principle; *State* v. *Porter* (1897) 32 Or. 135.

In the proof of any crime the guilty intent must be shown as well as the criminal act charged; but where the act charged is of such a character that from proof of the fact of its commission the guilty intent may be inferred, direct proof of the intent may be dispensed with. Proof of the act charged raises an inference of guilty intent; May's Crim. Law § 27. The act may be proved by the testimony of witnesses or by statements of the defendant in which he acknowledges it; but however the fact be proved, the inference of intent may arise without direct proof. It is the establishment of the act which gives rise to the inference, and if in proving the act evidence is incidentally found which directly bears on the intent, this evidence is only incidental, and is not necessary to create the inference. It strengthens or weakens an inference already established, but that inference may exist without this evidence. On the other hand, at the trial, in order to prove the act charged. it may be necessary to establish a series of facts and from this series of facts allow the jury to infer the commission of the criminal act charged and the guilty intent. These facts taken separately are colorless as to guilt, and the proof of no one of them will establish either the criminal act or the intent. It is obvious that a statement by the defendant acknowledging the existence of one of these facts has a different effect from his acknowledgment of the "main fact," and it is desirable that the two kinds of acknowledgments should have different names. While both are admissions in a wide sense, one is an admission of a fact from which guilty intent may be directly inferred and is properly called a confession, while the other admits a fact which can give rise to such an inference only in connection with other facts. Greenleaf defines a confession as "a direct assertion by the accused person of the doing of the act charged," Greenleaf on Evid., 16th ed. § 213, while, as distinguished, "an acknowledgment of a subordinate fact, not directly involving guilt, or, in other words, not essential to the crime charged," is a mere admission, Wigmore on Evidence § 213 (advance sheets). See *State* v. *Novak* (1899) 109 Ia. 717. Since it is the establishment of the act charged which gives rise to the inference of guilty intent, it would seem that exculpatory matter, in a statement conceding the act, could at best only tend to cast a reasonable doubt on the inference, and since the jury must determine whether in truth it does raise a reasonable doubt in their minds, and since they may believe all or a part of the statement, *Blackburn* v. *State* (1872) 23 Oh. St. 146, the court

seems to be in error when it holds that the inference of intent is necessarily overcome by the exculpatory matter. But if the exculpatory matter actually does overcome the inference, its effect is still not that of an admission merely. A neutralized confession leaves the main fact still established, and the remaining duty of the state is to prove only the intent. For this it is now driven to other evidence. An admission by itself never establishes either the act charged or the intent; it leaves each of these elements still to be proved by other evidence, and to treat a neutralized confession as an admission is to require the state to establish the two essentials of a crime when one is conceded to be already established.

Admissions and confessions are allowed to be introduced as exceptions to the hearsay rule, because of the probability of the defendant having spoken the truth when he declared against his interest; per Eyre, C. J., in *Hardy's Trial* (1794) 24 How. St. Tr. 1093 While exculpatory matter in itself is not within the reason of the exception, still, when it constitutes part of the statement conceding the act, it is allowed in evidence so that the jury may decide what was the true meaning of the defendant, Greenleaf on Evidence, 16th ed. 218, but this is a ground essentially different from that assigned by the court in the principal case.

OBSTRUCTION, REPULSION AND DISCHARGE OF SURFACE WATER.— The law of surface waters has developed from attempts to reconcile with the right of the landowner to deal his land as he will, the right of his neighbor not to be interfered within the use of his. The civil law lays stress upon freedom from interference; the common law upon the right of user, and from the adoption of the one or the other these divergent views by the various courts of this country a conflicting variety of decisions has arisen. The civil law rule creates a servitude between adjoining proprietors, by which the lower proprietor is bound to receive the waters which naturally flow from the estate above, and, in turn, the upper proprietor must not prevent such waters from reaching his neighbor below in the usual manner. The common law rule rejects this doctrine and regards surface water as a common enemy which each may keep off his land as best he can, assimilating the law of surface waters with the law of percolating waters, rather than that of water-courses. The Court of Chancery of New Jersey in its recent holding that one may build bunkers and so change the drainage as to throw water from his land onto the land of his neighbor seems to have extended the common law rule to a point where it is no longer tenable. *Sullivan* v. *Browning* (1904), 58 Atl. 302. The court quotes with approval the following dictum of Bigelow, J., in *Gannon* v. *Hargadon* (Mass. 1865) 10 Allen 106: "nor is it at all material * * * whether a party obstructs or changes the direction and flow of surface water by preventing it from coming within the limits of his land or by erecting barriers, or changing the level of the soil so as to turn it off in a new course *after it has come within his boundaries.*"

Surface water being part of the soil, is the property of him on whose land it lies; when it passes to his neighbor's land it becomes the lat-